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Supreme Court of the United States

October Term, 1954

Case No. 752

HURLEY A. WALTERS, W. HOYT KNIGHT, OTIS ROLLISON, LEROY ROLLISON, LETROY GANTT, EDWARD S. LUCAS, AND TEXTILE WORKERS UNION OF AMERICA, CIO, LOCAL 254, PETITIONERS,

versus

FRANK WHEELER HALL, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA, AND THE COURT OF COMMON PLEAS, RICHLAND COUNTY, SOUTH CAROLINA

BRIEF FOR RESPONDENT IN OPPOSITION

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STATUTES INVOLVED

In addition to the statutes cited by petitioners (Pet. 4), South Carolina Circuit Court Rules 76 and 79 also bear on the questions presented. These Rules are set out in the appendix hereto.

STATEMENT

(A)

Preface

The following comments are made in clarification of the statement of petitioners (Pet. 4-9).

The members of the Union Petitioner and the individual Petitioners are all residents of the State of South Carolina (R. 2, 6, 8).

The statement regarding the vote of the Union's Members to strike (Pet. 5) conflicts with the evidence presented. The minutes of the meeting introduced in evidence say the vote was unanimous (Pl. Ev. 4; R. 197, 439). The portion of the record referred to by petitioners (R. 303) contains testimony of one of petitioners here. Conflict in the testimony in this case can be resolved only by the jury.

We cannot agree that the injuries sustained by respondent were the result of a personal altercation. Whether or not the assailant was a Union picket about the business of the Union was another question of fact for the jury.

Whether the individual members of the Union Petitioner were served with process (Pet. 5) is a question of law, not one of fact, under the South Carolina cases. Service on an agent of an unincorporated association is service on every member. *Elliott v. Greer Presbyterian Church*, 181 S. C. 84.

Neither do we agree that prior to the present case the law in South Carolina "required substantive proof of the liability of each and every member of the association before judgment might be recovered against the association" (Pet. 6). See *Ex Parte Baylor*, 93 S. C. 414.

We also disagree with the statement as to the Union's ground of demurrer (Pet. 7) in the trial court. This point is dealt with in detail in the argument herein and accordingly is not discussed here.

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The motions of the petitioners in the trial court for judgment notwithstanding the verdict (Pet. 7) were not considered by the court inasmuch as the rules of the Circiut Court had not been complied with (R. 444. Pet. 28) (See Appendix *infra*).

We disagree with the statement (Pet. 8, 9) that the Union petitioner was treated as an entity or that such a question was presented to the South Carolina Supreme Court on appeal. No exception embodied that question (R. 447-454). Nor do we concur that the questions of due process and equal protection under the Fourteenth Amendment to the United States Constitution were raised in the courts below or there considered. These points are dealt with hereinafter in the argument.

(B)

The petitioner TWUA, CIO, Local No. 254 had unanimously called a strike, according to its records. It maintained a picket line around the mill at all times, which was in charge of the petitioner Lucas as picket captain, and two lieutenants, the petitioners Gantt and Knight (R. 374).

In order to support his family, the respondent, not a member of the local Union, attempted to go to work. Petitioner Walters, a member of the Executive Committee (the governing body) of the Union, made two trips to respondent's home the day before the assault to warn him not to go to work "because if he did, there was going to be trouble" (R. 155, 156, 299). The picket line was a Union function (R. 403) and all individual petitioners were members of the Union petitioner (R. 195-196), and participated in the actual assault of the respondent. The petitioner Leroy Rollison, an assailant who actually struck the respondent, didn't even know the respondent or his name and had never known him prior to the incident (R. 347). The picket

captain, petitioner Lucas, tried to get to the respondent to "handle" him, as did the petitioner, Gantt (R. 126, 147, 252). Even though available the petitioner Lucas did not testify in this case .

Only four people worked in the mill that day and the representatives of the Union petitioner really focused their attention upon them (R. 23, 32, 77, 83, 177, 199, 206). The picket captain told the mill supervisor: "We are going to get them today" (R. 67). The Business Manager of the Union petitioner, the actual executive of the Union, told a Deputy Sheriff on the morning in question: "If you will leave, we will see to it that none of them go in to work" (R. 167); this was before any trouble. The purpose of the Union was achieved for the mill stopped the next day (R. 337).

When respondent left the mill after working, he was mobbed (R. 86); he was knocked to the ground after running 200 feet (R. 357-358); he was struck in the back of the head one or more times and knocked off his feet (R. 175, 180); he crawled on all-fours, like a dog, to get away (R. 87, 113); he was injured and put in great fear (R. 152, 175) and sought treatment by a doctor. The petitioner LeRoy Rollison had rocks in his hands, and all of this entertained the Union crowd (R. 177). See the brutal and vicious relation of events as told even by the petitioner LeRoy Rollison (R. 357-358). The respondent never struck a blow and never did swing at anyone (R. 32, 127).

The picket captain and lieutenants were never removed from their Union jobs and duties (R. 402-403). The petitioner LeRoy Rollison pled guilty to criminal assault and battery of a high and aggravated nature; the Union petitioner made arrangements for his criminal bond and paid the premium on it as ordinary Union business; the Union advanced the money for his criminal fine, all of which was

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done upon the the approval and direction of the Executive Committee of the Union petitioner (R. 412-413).

There was ample evidence of conspiracy and ratification. No motion for a directed verdict was ever made on behalf of any of the petitioners.

The respondent brought an action in the Court of Common Pleas for Richland County, South Carolina (wherein is located the State Capital), for personal injuries sustained at the hands of the petitioners. The case was submitted to the jury on two causes of action, to wit: Conspiracy and liability upon *respondeat superior*. Petitioners "accept(ed) the charge" of the Trial Judge.

There is no basis for claim that the verdict was the result of passion or prejudice: the jurors were examined on their *voir dire* (R. 13-20). The facts of the case are outrageous and fully warrant the verdict.

The South Carolina Supreme Court has consistently interpreted the statutes in question with no departure in this case. No Federal right or question is involved here. Accordingly, this Court should not entertain jurisdiction of this case.

ARGUMENT

I

1. **Whether South Carolina may, consistent with the Due Process requirements of the Fourteenth Amendment, permit a suit to be filed against an unincorporated association eo nomine, and permit the judgment recovered therein to be satisfied out of the individual property of the members, without any notice or hearing for such individual members.** (Petitioners' Question 1.)

The facts of the present case do not warrant the first question presented by the petitioners and this Court accordingly does not have jurisdiction to entertain this question for the reasons hereinafter given.

The Federal question sought to be presented by petitioners was not raised in the trial court nor was it passed upon by the trial court. In their assignments of error and exceptions on appeal to the Supreme Court of South Carolina no mention was made of the question now presented (R. 447-454). Nowhere in the opinion of the South Carolina Supreme Court (Pet. Appendix A) is it intimated that the question was considered by that court. Neither did any of the exceptions presented to the South Carolina Supreme Court require the determination of the question now sought to be presented.

The United States Supreme Court will not undertake to review what the court below did not decide. *Walters v. City of St. Louis*, 347 U. S. 231. *In Edelman v. People of State of California*, 344 U. S. 357, this court said:

> "It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of state law."

The following language from *Williams v. Kaiser*, 323 U. S. 471, is pertinent on the question:

> "It is a well established principle of this court that before we will review a decision of a state court it must affirmatively appear from the record that the federal question was presented to the highest court of the state having jurisdiction and that its decision of the federal question was necessary to its determination of the cause. *Honeyman v. Hanan*, 300 U. S. 14, 18; *Lynch v. New York*, 293 U. S. 52. And where the decision of the state court might have been either on a state ground or on a federal ground and the state ground is sufficient to sustain the judgment, the Court will not undertake to review it."

See also *Adler v. Board of Education of the City of New York*, 342 U. S. 485.

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However, petitioners assert that the Federal question now sought to be presented was considered and determined by the Supreme Court of South Carolina (Pet. 9) and cite therefor the order denying the petition for re-argument (Pet. 46) It is to be noted that the main question presented in the petition for rehearing and re-argument was the question of liability in tort of the Union petitioner and its members for damages resulting from a conspiracy, (one of the main questions initially raised on appeal from the Circuit Court) and not the question here presented. The order denying the petition for re-argument does merely that and nothing more. It is not an opinion on the merits of the Federal question now sought to be raised. The order merely states that none of the matters was overlooked or misapprehended in the preparation of the judgment. Since the question now raised was not even presented to the South Carolina Supreme Court or fairly raised by any of the exceptions on appeal thereto, and no mention or suggestion relative thereto is found in the opinion, it is clear that the present question was not considered by the South Carolina Supreme Court, in preparing the judgment entered.

The authority of *Herndon v. State of Georgia*, 295 U. S. 441, succinctly states the rule as follows:

> "The federal question was never properly presented to the state supreme court unless upon motion for rehearing; and that court then refused to consider it. The long established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it. *Texas etc. R. Co. v. Southern Pacific Co.*, 137 U. S. 48, 54; *Loeber v. Schroeder*, 149 U. S. 580, 585; *Godchaux Co. v. Estopinal*, 251 U. S. 179, 181; *Rooker v. Fidelity Trust Co.*, 261 U. S. 114, 117; *Tidal Oil Co. v. Flanagan*, 263 U. S. 444, 454, 455, and cases cited."

Another reason precludes this Court from entertaining jurisdiction of this question. The petitioners have not shown any denial of due process insofar as they are concerned, and their petition is silent on this point. They appear to be petitioning on behalf of members of "churches, veteran groups, chambers of commerce and other trade groups, lodges, labor unions, political parties, bar and other professional organizations" (Pet. 10), in general.

None of the petitioners claim that they were not served with process nor do they assert that they were not within the jurisdiction of the court below. Neither do they assert that they were "without any notice or hearing" as to their property rights and liabilities in the trial court and in the South Carolina Supreme Court. The fact of the matter is that the petitioners are petitioning this Court for relief to parties which they claim have not been given notice or granted a hearing and who are not before this court. This they are not permitted to do under the long established rules of this court. As was said in *Barrows v. Jackson*, 346 U. S. 249:

> "Ordinarily, one may not claim standing in this court to vindicate the constitutional rights of some third party. • • • The requirement of standing is often used to describe the constitutional limitation on the jurisdiction of this Court to 'cases' and 'controversies'. • • • Apart from the jurisdictional requirement, this court has developed a complementary rule of self-restraint for its own governance (not always clearly distinguished from the constitutional limitation) which ordinarily precludes from challenging the constitutionality of state action by invoking the rights of others. See *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 346-348, (Concurring opinion). The common thread underlying both requirements is that a person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation. • • •

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"There are still other cases in which the Court has held that even though a party will suffer a direct substantial injury from application of a statute, he cannot challenge its constitutionality unless he can show that he is within the class whose constitutional rights are allegedly infringed. *Bode v. Barrett*, 344 U. S. 583, 585; *Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571, 576; *People of State of New York ex rel. Hatch v. Reardon*, 204 U. S. 152, 160-161; see also *Tennessee Elec. Power Co. v. Tennessee Valley Authority*, 306 U. S. 118, 144. * * *

"This is a salutary rule, the validity of which we reaffirm."

The concurring opinion of Mr. Justice Frankfurter in *Coleman v. Miller*, 307 U. S. 433, is also in point:

"* * * No matter how seriously infringement of the constitution may be called into question, this is not the tribunal for its challenge except by those who have some specialized interest of their own to vindicate, apart from a political concern which belongs to all. *Stearns v. Wood*, 236 U. S. 75; *Fairchild v. Hughes*, 258 U. S. 126. * * *

"We can only adjudicate an issue as to which there is a claimant before us who has a special, individualized stake in it. One who is merely the self-constituted spokesman of a constitutional point of view can not ask us to pass on it. * * *".

See also, *Tyler v. Judges of the Court of Registration*, 179 U. S. 405; *The Winnebago*, 205 U. S. 354; *Rosenthal v. People of State of New York*, 226 U. S. 260; *McCabe v. Atchison*, 235 U. S. 151; *Sprout v. City of South Bend*, 277 U. S. 163; *Tileston v. Ullman*, 318 U. S. 44; *Alabama State Federation of Labor, Local Union No. 103, United Brotherhood of Carpenters and Joiners of America v. McAdory* 325 U. S. 450; *Gange Lumber Co. v. Rowley*, 326 U. S. 295.

The six named individual petitioners certainly have no standing to claim a denial of due process. They have been

fully heard and their rights and liabilities adjudicated to the maximum extent provided by law. The Union petitioner also has had its rights and liabilities fully adjudicated in the state courts. If the Union petitioner now asserts that it petitions on behalf of its individual members not named in the action below then it represents its members and did so in the state court proceedings. If the Union petitioner's unnamed members were so represented in the state court proceedings then even they have no claim of denial of due process.

The Union petitioner cannot take two inconsistent positions in this Court, that is, first: that its unnamed members are represented by it, and second: that its unnamed members have not been given notice of the proceedings, have not been given an opportunity to be heard, and have not been before the state courts.

The question now sought to be raised is premature. There is no assertion or showing that the individual property of any unnamed member of Union petitioner has been subjected to or that an attempt has been made to subject such property to, satisfaction of the judgment obtained in the state courts. Until such an attempt is made the question is not properly raised and the only person entitled to raise the question is the person whose property is so subjected to satisfaction of the judgment. No such person is now before this Court. Furthermore, satisfaction of the judgment need not be out of the individual property of the Union's members, it can be out of the "property of the association" (Sec. 7798, 1942 Code of South Carolina, Pet. 4). Neither does the statute (7798, *supra*) contemplate all separate individual property of the Union's members but only that property **"found in the State"** (Pet. 4.) (Emphasis added.)

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Although Section 7798 of the 1942 South Carolina Code was cited in the South Carolina Supreme Court's opinion (Pet. 28) that statute was not involved in deciding the questions there raised on appeal. The South Carolina Supreme Court has not passed on that statute insofar as this case is concerned.

It was found as a fact on the trial of the action that the officers and members of the Union petitioner were guilty of a conspiracy which resulted in injury to respondent and there was ample evidence of ratification of the tortious acts committed by those acting for and on behalf of the Union petitioner (Pet. 28, 30). These were facts found by a jury of twelve men.

However, it does not appear that the unnamed members of the Union petitioner were without notice of the proceedings in the state courts. Service as prescribed by the statute (Section 7797 of the 1942 South Carolina Code) upon the representatives of the Union petitioner gives reasonable notice and an opportunity to defend to the other members. All the Union petitioner's members are residents of South Carolina (R. 2, 8). There is no member of the Union petitioner now before this Court claiming he has had no notice of the action or has been denied an opportunity to be heard. The petitioners here seek not to remedy a denial to them of due process or equal protection of the laws but they seek only a means of evading their adjudicated liability for the tortious conduct of their agents and themselves.

II

2. **Whether the South Carolina statute is made unconstitutional when it is construed, as it was here, as permitting the judgment against the association (which can be enforced against the individual property of the members) to be based on the association's actions as an entity, without allegation or proof that the members authorized, participated in or ratified such tortious actions.** (Petitioners' Question 2.)

What has heretofore been said with reference to the jurisdiction of this Court to entertain the first question presented by petitioners (by reason of their not having timely raised the question and by reason of their not being the parties allegedly denied due process and equal protection of the law) is fully applicable to the second question and therefore will not be repeated. The second question does require different treatment in certain particulars, however.

This Question was not presented to the trial court and was not made a ground of the motion for a directed verdict or a new trial. Petitioners' failure to do so precluded the South Carolina Supreme Court from entertaining the question (even had it been raised) under Rules 76 and 79 of the Rules of the Circuit Court of South Carolina. (Appendix *infra.*) Petitioners not having seasonably invoked the procedural requisites of the state courts are now precluded from raising this question in this court.

The second question draws into issue questions of fact as to proof of ratification of the tortious acts of those acting for and on behalf of the Union petitioner. This is a matter on which the jury has passed after allegation (R. 5) and ample proof thereof (Pet. 28, 30).

We again say that as to the named individual petitioners this question discloses no basis for their petitioning

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this Court inasmuch as their individual liability has been alleged and proved beyond any doubt.

Petitioners assert in their second question that the judgment against the Union was based on the Union's "actions as an entity". The verdict and judgment was based on the Union's actions as a principal acting through agents. The membership could and did designate agents and officers to act for the membership and the agents thus designated were the agents of all the members of the association. As was stated in *Feldman v. North British & Mercantile Ins. Co.*, 137 F. (2d) 266:

> "Liability of a member may exist without personal participation in the unlawful act of a voluntary association if the member sets the proceedings in motion or agrees to a course of action which culminates in wrongful conduct."

The law as applied in the present case has been applied in other jurisdictions as the following from *Clarkson v. Laiblan* (Mo.), 216 S. W. 1029 shows:

> "* * * we see no reason why a voluntary association should not be liable for the wrongful acts of an agent in the event he had authority to act and did so within the scope of his said authority, and in the event he chose to perform his duties in an unlawful manner, we think the members of a voluntary association would be liable for his acts. * * *"

See also, *United Coal Companies v. Rice et al.*, 22 F. Supp. 221, and the other cases cited in the opinion of the South Carolina Supreme Court (Pet. 31).

Petitioners urge that the present decision of the South Carolina Supreme Court overrules its earlier decisions, regarding the liability of unincorporated associations. Petitioners attempt to support this position by claiming that the South Carolina Supreme Court has done what that court says in express language it has not done, to wit, treat

an unincorporated association as a legal entity (Pet. 28, 29). The South Carolina Supreme Court followed its earlier decisions and held them controlling on the present case in saying: "Its liability for damages for conspiracy entered into between its officers and members, which was proven here, is indicated by our former decisions which have been cited." (Pet. 30). The South Carolina Supreme Court quoted with approval the trial judge's order that "members of such associations are all principals" (Pet. 30). There is not the slightest suggestion in the opinion that the Union petitioner was considered or treated as a legal entity by the state courts.

The constructions placed on statutes of other states are not pertinent to the question here since the South Carolina statutes differ therefrom and the South Carolina statutes have been several times construed prior to the present case. *Ex Parte Baylor*, 93 S. C. 414; *Medlin v. Ebenezer Methodist Church*, 132 S. C. 498; *Elliott v. Greer Presbyterian Church*, 181 S. C. 84; *Edgar v. Sou. Ry. Co.*, 213 S. C. 445, 224 S. C. 65. See also *Bowen v. Bricklayers, Masons & Plasterers Int. Union of America*, 225 S. C. 29. No new or novel construction of the South Carolina statutes in question was made in the present case. The present case merely reaffirms the previous cases decided under the statutes being discussed.

Petitioners' statement that they "urged the Supreme Court of South Carolina to reverse the judgment below because there was no allegation and no proof that each of the individual members of the union was personally responsible for the tort complained of" (Pet. 18) is wholly unsupported by the record. This contention or statement appears for the first time in their petition for a writ of certiorari. None of the twenty-four exceptions on appeal to the South Carolina Supreme Court (of which the 19th and 24th

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were abandoned) even remotely suggests the contention. (R. 447-454). Petitioners say this was the ground of demurrer to the complaint (Pet. 7). Again they are factually in error.

The grounds of demurrer to the complaint, which demurrer was made by the Union petitioner only, was "that it did not state a cause of action against it because (1) its alleged acts are not actionable, and (2) in effect that the strike was not unlawful, wherefore actual and punitive damages are not recoverable" (Pet. 27. Also R. 7, 8). On appeal to the South Carolina Supreme Court the Union petitioner in its brief filed in that court discussed the ground of demurrer as follows: "The complaint fails to state facts sufficient to constitute a cause of action against the defendant, Local Union No. 254, for the reason that the complaint alleges that the defendant, Local Union No. 254, is an unincorporated association which may not sue or be sued."* It is readily seen that no such question was presented to the South Carolina Supreme Court as is now claimed by petitioners.

Petitioners also say of the Union members that "Admittedly, they had not participated in the tort and the membership had not been shown" to authorize or ratify the tortious conduct (Pet. 18). It certainly is not admitted by respondent that the Union members did not participate in the tort or authorize or ratify it. This is the basis on which the action was brought against the Union petitioner and a jury found that members of Union petitioner participated in, authorized and ratified the tortious conduct complained of. Petitioners seek here to try again questions of fact which are matters solely for a jury to determine. Evidence presented at the trial amply supports the jury's finding, which finding was affirmed by the South Carolina Supreme

* Argument of appellant Textile Workers Union of America (CIO) Local No. 254, Page 6.

Court after a review of the entire record, consisting of 455 pages, and consideration of briefs prepared by all parties.

Much is said by petitioners about the "construction" of "the statute" by the South Carolina Supreme Court. As previously mentioned, there are three separate statutes. The Petitioners complain only of Section 7798 of the 1942 South Carolina Code (Pet. 4), but it was neither construed nor applied (but merely discussed) by the South Carolina Supreme Court: no question relating to this Statute has ever been presented to the Court in this case.

It is unquestioned that the members of an unincorporated association are liable for the acts of the association's agents, representatives and those acting on its behalf and it has been so held numerous times. See *United Const. Workers v. Laburnum Const. Corp.*, 194 Va. 872, affirmed 347 U. S. 656. See also cases cited in the opinion of the South Carolina Supreme Court (Pet. 31). Such was the present action in the South Carolina courts and we submit that the proof of liability in this case was a question of fact decided by a jury adversely to petitioners. The position of petitioners resolves itself to this: by forming an unincorporated association the members thereof may escape liability which otherwise would be theirs. The law does not permit such a travesty of justice.

III

3. **Whether the statute of South Carolina, insofar as it authorizes suit against an unincorporated association in its association name but prohibits unincorporated associations from bringing suits in their association name, deprives the Petitioners of "due process" and "equal protection of the laws."** (Petitioners' Question 3.)

The third question presented by petitioners, like the first two questions, was not raised in the South Carolina

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courts and was not passed upon by the Supreme Court of South Carolina. The named individual petitioners certainly can claim no prejudice to them even had the question been raised. The discussion and authorities cited under the first question relative to these points are also applicable to this question and therefore will not be repeated. However, it is admitted that an unincorporated association as such has not the capacity to sue in the state courts of South Carolina. See *Ex Parte Hart,* 190 S. C. 473, cert. den., 308 U. S. 569, which so holds.

This question is really irrelevant to the case. It first appears in the petition for writ of certiorari but the petition fails to point out when and where the question was raised in the South Carolina Courts. The record discloses that the question was not raised and could not have been raised in the South Carolina courts. Petitioners made no attempt to serve or file a counterclaim or to assert an action or claim of any nature against respondent in the State Court. Petitioners do not assert that they have been denied the right to assert any claim or action against respondent or that they even have a claim or cause of action against respondent. The named individual petitioners certainly cannot say that they may not sue and be sued. Indeed, petitioners admit an unincorporated association may "compel observance of its rights" by joining all members of the association as parties plaintiff (Pet. 22). Their complaint is not one of a denial of due process but rather a quarrel with the established common law procedure, for protecting their rights.

> "The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. If that is preserved, the demands of due process are fulfilled." *Anderson National Bank v. Luckett,* 321 U. S. 233.

The requisites of due process of law have been met and have been fully utilized by the Petitioners as the lengthy, highly contested record discloses.

Furthermore, an unincorporated association is not a legal entity and accordingly not a "person" within the protection of the due process clause of the Fourteenth Amendment to the United States Constitution. There are as many "persons" as there are members of an unincorporated association and the due process provision of the constitution is personal to each separately and not to all jointly.

The South Carolina statutes under discussion apply indiscriminately to all unincorporated associations, regardless of the nature of the association or the purpose for which formed. All associations are given like treatment and application of the law without distinction of any kind. There is no basis whatever for asserting that these statutes deny equal protection of the law to petitioners. The equal protection of the laws is secured if the laws operate on all alike. *Duncan v. Missouri*, 152 U. S. 382.

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CONCLUSION

The questions raised in the petition were not raised in the court below. Neither was their determination necessary to the opinion rendered nor were they passed on by the South Carolina Supreme Court. Petitioners are not among those who might properly raise the questions presented as they show no infringement of their constitutional rights. The statutes involved do not violate due process of law or equal protection of the laws as applied in this case. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

South Carolina Circuit Court Rule 76, Vol. 7, page 417, of 1952 South Carolina Code of Laws:

> "The point that there is no evidence to support an alleged cause of action shall be first made either by a motion for nonsuit or a motion to direct the verdict; and the point that there is no evidence to support a defense shall be first made by motion to direct a verdict."

South Carolina Circuit Court Rule 79, Vol. 7, page 418 of 1952 South Carolina Code of Laws:

> "Whenever a motion for a directed verdict, made by either party at the close of all the evidence, is denied, or for any reason is not granted, the trial court may, after verdict, upon motion made therefor, order judgment to be entered notwithstanding the verdict in favor of the party who was entitled to have a verdict directed in his or its favor. Such motion *non obstante veredicto* must be made after the reception of the verdict, and before the adjournment of the court in which the case was tried. A motion for a new trial may be joined with the motion *non obstante veredicto,* or a new trial may be prayed for in the alternative."

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